
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

CHARLES BRACKIN, LLC AND)	
DONNA BRACKIN LLC,)	Petition Nos.: 49-901-06-1-4-11207
)	49-901-07-1-4-09025
Petitioners,)	49-901-08-1-4-00009
)	
v.)	Parcel No.: 9031537
)	
MARION COUNTY ASSESSOR,)	County: Marion
)	
Respondent,)	Township: Wayne
)	
)	Assessment Years: 2006, 2007, 2008

**FINAL DETERMINATION GRANTING MARION COUNTY ASSESSOR'S
MOTION FOR SUMMARY JUDGMENT**

I. Introduction

1. The undisputed evidence shows that the Petitioners, Charles Brackin, LLC, and Linda Brackin, LLC (“Brackins”),¹ withdrew their appeal for the 2006 assessment and settled their appeals for 2007 and 2008. We therefore grant the Marion County Assessor’s motion for summary judgment.

¹ The Form 131 petitions refer to the parties as “Charles Brackin, LLC ½” and “Donna Brackin, LLC ½.” It appears the “1/2” refers to their respective ownership interests. Other documents simply reference “Charles Brackin, LLC and “Donna Brackin, LLC.”

II. Procedural History Before the Board

2. On April 10, 2013, the Brackins filed three Forms 131 petitions with the Board seeking review of the subject property's 2006-2008 assessments. On March 2, 2016, we received faxes from the Assessor, which included the following documents: (1) a May 15, 2009 letter from the Brackins' attorney, Thomas Hendrickson, to the Assessor withdrawing the 2006 appeals for the subject property and two unrelated properties, and (2) Form 134 reports reflecting the parties' agreement to settle the 2007 and 2008 appeals for the subject property.
3. On March 16, 2016, our designated administrative law judge, David Pardo ("ALJ"), sent a notice to parties explaining that it did not appear the Assessor had served Brackins or Hendrickson, and that no motion or letter accompanied the faxes. The ALJ indicated that if the Assessor was contending the appeals had been resolved, he should file a motion to that effect. The ALJ further indicated that he would set the appeals for a hearing unless the Assessor filed such a motion or the Brackins withdrew their appeals.
4. On May 4, 2016, the ALJ scheduled a status conference. He noted that the Board had not received a response to the March 2 notice and that it had since been informed (in a different case) that Hendrickson might no longer be practicing law. He therefore set the status conference to determine (1) whether the Brackins would continue to be represented, either by Hendrickson or by substitute counsel, and (2) whether a hearing on the merits of the appeals would be necessary. The order scheduling the conference was served separately on Hendrickson and on the Brackins.² The Brackins did not appear at the conference, either through their members or by counsel. No attorney besides Hendrickson has entered an appearance for the Brackins.

² In completing the Form 131 petitions, Hendrickson left the space provided for the taxpayer's address blank. The Board therefore used the address listed on an attachment to the Brackins' Form 131 petition for the 2006 assessment year. The Board sent various orders and notices to the Brackins at that address. None was returned.

5. On July 26, 2016, the Assessor filed his summary judgment motion and designated the following materials:

Exhibit A: The Brackins' Form 131 petition for 2006 with attachments;

Exhibit B: Affidavit of Gregory A. Dodds with the following exhibits

Exhibit 1: May 15, 2009 letter (via fax) from Hendrickson to Jan Stroud at the Assessor's office;

Exhibit 2: July 9, 2013 e-mail from Hendrickson to Dodds;

Exhibit 3: Form 134 report for 2007 assessment year, dated October 7, 2013;

Exhibit 4: Form 134 report for 2008 assessment year, dated October 7, 2013.

6. The Brackins did not respond to the Assessor's summary judgment motion.

III. Undisputed Facts

7. On May 15, 2009, Hendrickson withdrew several appeals, including the Brackins' appeal of the subject property's 2006 assessment. *Dodds Aff. at ¶ 6, Ex. 1.*

8. On June 25, 2013, after the Brackins had filed their Form 131 petitions with the Board, Gregory Dodds, a commercial valuation specialist for the Assessor, sent an email to Hendrickson. In that e-mail, Dodds confirmed that Hendrickson had withdrawn the 2006 appeal and offered to reduce the 2007 and 2008 assessments to the 2006 value of \$44,700. On July 9, 2013, Hendrickson accepted Dodds' offer. Finally, on October 7, 2013, Hendrickson and the Assessor's representative signed Form 134 reports agreeing that the 2007 and 2008 assessments should be \$44,700. *Dodds Aff at ¶¶ 7-9, Exs. 2-4.*

V. Discussion

9. Our procedural rules allow summary judgment motions, which are made "pursuant to the Indiana Rules of Trial Procedure." 52 IAC 2-6-8. Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct.

2002). The party moving for summary judgment must make a prima facie showing of both those things. *Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). It is not enough for a movant to show an opponent lacks evidence on a necessary element of its claim; instead, the movant must affirmatively negate the opponent's claim. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). If the movant satisfies its burden, the non-movant cannot rest on its pleadings, but rather must designate sufficient evidence to show that a genuine issue exists for trial. *Id.* In deciding whether a genuine issue exists, we must construe all facts and reasonable inferences in favor of the non-movant. *See Carey v. Ind. Physical Therapy, Inc.*, 926 N.E.2d 1126, 1128 (Ind. Ct. App. 2010).

10. The Assessor argues (1) that the Brackins withdrew their appeal of the 2006 assessment before the Marion County Property Tax Assessment Board of Appeals addressed it, and (2) that they settled their 2007 and 2008 appeals.
11. We agree. The undisputed evidence shows that Hendrickson withdrew the Brackins' 2006 appeal on May 19, 2009. While he did not specify whether the withdrawal was with or without prejudice, there is no indication that the Brackins filed another appeal for 2006 at the local level, much less a timely one. *See* I.C. § 6-1.1-15-1(c) and (d) (establishing deadlines for challenging an assessment). Thus, there is no 2006 appeal properly before us.
12. Similarly, the undisputed evidence shows that the Brackins agreed to settle their 2007 and 2008 appeals. Hendrickson accepted Dodds' settlement offer on the Brackins' behalf, and he signed Form 134 reports memorializing the agreement. The Brackins do not claim Hendrickson lacked authority to settle the appeals. Indeed, they did not even respond to the Assessor's summary judgement motion.
13. In light of the Brackins' withdrawal of their 2006 appeal and their agreement to settle the 2007 and 2008 appeals, there are no genuine issues of material fact, and the Assessor is entitled to judgment as a matter of law.

VI. Final Determination

14. We grant the Assessor's motion for summary judgement and dismiss the Brackins' Form 131 petitions for the 2006-2008 assessment years.

Dated: January 11, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/juciciary/rules/tax/index.html>>.

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